

# EXHIBIT A

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
BRIAN WALSH and BARBARA WALSH,

Plaintiffs,

-against-

Civ. Act. No.:  
09 CIV 1803

KONINKLIJKE LUCHTVAART  
MAATSCHAPPIJ N.V. a/k/a KLM  
ROYAL DUTCH AIRLINES,

Defendant.  
-----X

399 Knollwood Road  
White Plains, New York

October 29, 2009  
9:15 a.m.

EXAMINATION BEFORE TRIAL of BRIAN WALSH, the  
Plaintiff herein, held at the above time and place,  
taken before Cheryl Thompson, a Shorthand Reporter  
and Notary Public within and for the State of  
New York, pursuant to Order.

\* \* \* \* \*

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## APPEARANCES:

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MARISSA N. LEFLAND, ESQ.

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## STIPULATIONS 3

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that the sealing, filing, and certification of the within deposition be waived; that such deposition may be signed and sworn to before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the officer before whom said deposition is taken.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to form, are reserved to the time of trial.

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BRIAN WALSH,

the Plaintiff herein, having been  
first duly sworn by a Notary Public  
of the State of New York, upon being  
examined, testified as follows:

## EXAMINATION BY

MR. BANINO:

Q Please state your name for the record.

A Brian J. Walsh.

Q Please state your address for the  
record.

A 5702 Chelsea Cove North, Hopewell  
Junction, New York 12533.

Q Good morning, Mr. Walsh.

A Good morning.

Q My name is Bartholomew Banino, and I  
am an attorney with Condon & Forsyth representing  
KLM Royal Dutch Airlines in this action.

Have you ever given a deposition  
before?

A No, I have not.

Q The way this works is, I'm going to  
ask questions and you're going to answer them as  
best you can.

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Because we have a court reporter  
writing down the answer, we need to verbalize our  
answers. We can't nod or --

A Right, I understand.

Q -- say "um-hm," which I sometimes do  
myself.

If you don't understand any questions,  
please feel free to stop me and ask me to clarify  
or tell me you don't understand, and I will try to  
ask it in a different way.

If you need a break, please let me  
know --

A Okay.

Q -- okay?

You have stated your name and  
address.

Does anybody live with you at the  
address you have given?

A Yes.

Q Who is that?

A My wife.

Q And what is her name?

A Barbara Walsh.

And currently also my son is living

1 Brian Walsh 6  
 2 with me temporarily.  
 3 Q What is his name?  
 4 A Matthew.  
 5 Q How old is Matthew?  
 6 A Twenty-eight.  
 7 Q Do you have other children?  
 8 A Yes, I do. Patrick is thirty-three,  
 9 Erin McDonald, she's married, you want to know how  
 10 old she is? You want her age?  
 11 Q Sure.  
 12 A She is -- she will be thirty-one in a  
 13 couple of weeks.  
 14 Q Is that all?  
 15 A Yes.  
 16 Q How long have you been married to  
 17 Barbara Walsh?  
 18 A Thirty-seven years.  
 19 Q How long have you lived at that  
 20 address?  
 21 A Let's see. We moved in May of 2002 so  
 22 seven-and-a-half years.  
 23 Q How long have you lived in the town or  
 24 area that you're living in now?  
 25 A Let's see. I moved to Hopewell in

1 Brian Walsh 7  
 2 19 --  
 3 MR. MEENAGH: Just one second.  
 4 Off the record.  
 5 (Whereupon, a discussion was  
 6 held off the record.)  
 7 A Thirty-three years, approximately.  
 8 Q What is your current profession?  
 9 A I am a high school football coach.  
 10 Q What school do you coach at?  
 11 A John Jay High School in Hopewell  
 12 Junction.  
 13 Q Is that also John Jay East Fishkill?  
 14 A That's correct.  
 15 Q How long have you been at John Jay?  
 16 A Five years.  
 17 Q Where were you prior to that?  
 18 A Brewster High School in Brewster,  
 19 New York.  
 20 Q What was your job there?  
 21 A I was a health educator and head  
 22 football coach.  
 23 Q At John Jay, do you have any other  
 24 positions other than football coach?  
 25 A No. In the off season I'm an

1 Brian Walsh 8  
 2 intramural worker, in the off season. I run  
 3 winter and spring intramural strength and  
 4 conditioning program.  
 5 MR. BANINO: Off the record.  
 6 (Whereupon, a discussion was  
 7 held off the record.)  
 8 Q Now, Mr. Walsh, we are here or the  
 9 subject of this lawsuit is a trip that you took in  
 10 July of 2007.  
 11 Can you please just briefly describe  
 12 what that trip was?  
 13 A It was a trip to Africa, Tanzania,  
 14 Africa, approximately two weeks, with my wife and  
 15 two friends. Two other friends, me, and my wife.  
 16 Q Who were those two friends?  
 17 A Jennifer Costabile.  
 18 Q You may need if you can spell for the  
 19 court reporter.  
 20 A Let's see. C-O-S-T-A-B-I-L-E. I  
 21 believe that's good.  
 22 And Carol McGowan was the other person  
 23 who accompanied us. McGowan, M-C capital G,  
 24 O-W-A-N. I believe. I believe that's it.  
 25 Q Do you know the addresses for either

1 Brian Walsh 9  
 2 Miss Costabile or Miss McGowan?  
 3 A Not the exact.  
 4 Q Approximately?  
 5 A Miss Costabile is Augusta Drive,  
 6 Hopewell Junction, and Carol is -- I believe it's  
 7 East 71st Street, Manhattan. I'm not sure of the  
 8 exact address right here.  
 9 Q How do you know Miss Costabile?  
 10 A She is a longtime friend that worked  
 11 with my wife in Newburgh as a teacher. She is  
 12 currently a teacher in Newburgh.  
 13 Q Miss Costabile or your wife?  
 14 A Miss Costabile.  
 15 My wife was a teacher for sixteen  
 16 years in Newburgh.  
 17 Q I assume you're referring to the  
 18 Newburgh school system.  
 19 A Yes.  
 20 Q How do you know Miss McGowan?  
 21 A She worked with my wife. My wife is  
 22 currently a literacy coach for the Board of Ed,  
 23 New York City, and she worked with my wife for a  
 24 few years so we became friends.  
 25 Q How did you purchase the tickets for

Page 10

Brian Walsh 10

this trip?

A I believe my wife purchased them through an agency, that she did it online.

Q Do you know the name of that agency?

A Let's see. Overseas Adventure Travel. They refer to it as "OAT." Based out of Boston, Mass.

Q Did she purchase the tickets for the four of you, or just you and your wife?

A I believe my wife purchased them just for us. I think. I'm not quite sure of that.

Q Do you have any documents in connection with the purchase of these tickets, any itineraries, any receipts?

A Possibly. I'm not sure.

MR. BANINO: I will follow up in a document request for those documents.

(REQUEST)

Q Do you have copies of those tickets, or boarding passes?

A I don't think so.

Q Do you recall if you threw them out after the trip?

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Brian Walsh 11

A I mean, I don't recall throwing them out but I'm not sure if I have them. I don't think I have the boarding passes.

Q Where did the transportation begin?

A It began at J.F.K. We flew out of J.F.K.

Q What were the cities you stopped in on your way to Tanzania?

A Amsterdam, and, let's see. I think that's it. We --

Q Where did you land?

A I think we landed in Kilimanjaro. I believe that's where we landed.

Q Did you travel internationally before?

A Yes.

Q About how many times have you traveled internationally?

A Three times before.

Q What were those other trips?

A They were trips to Amsterdam, they were trips to Italy, and to Ireland.

Q How long ago were each of those three trips?

A They were, let's see. Amsterdam was

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Brian Walsh 12

2002, Italy was I think either the year after or two years after so either 2003 or 2004, and then Ireland was 2005.

No. Ireland was 2006, because that was the year I retired from Brewster.

Q Your trip to Amsterdam, did you travel with KLM?

A I don't recall.

Q Do you recall the carriers that you traveled with to Italy or Ireland?

A I don't recall those. I think Ireland was Aer Lingus but I'm not sure.

Q Have you ever filed a claim of any kind against an airline before?

A No, I have not.

MR. BANINO: I'd like to mark this as Exhibit A (indicating).

(Whereupon, Passenger Name Record was marked Defendant's Exhibit A for Identification, as of this date, by the reporter.)

Q Mr. Walsh, I'm showing you a document which has been produced to your attorney. It's a passenger name record, and the lines on this

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Brian Walsh 13

document are numbered, and lines 3 to 7 show a flight itinerary.

Does that itinerary look like the itinerary that you traveled on?

And that is on July 5th, did you travel from J.F.K. to Amsterdam, and then July 6th travel from Amsterdam to Kilimanjaro, et cetera?

A Yes, I believe that's correct. There was a time change, so as far as the day, I guess that's -- I believe that's it.

Q Now, did you travel from New York with Miss Costabile and Miss McGowan?

A Yes.

Q So the four of you traveled together throughout this itinerary.

A Yes. Well, yes. On the way there. On the way back Miss McGowan stayed over for a couple of days in Amsterdam, so she didn't fly back to New York with us.

Q Did you meet a group of people when you arrived at J.F.K. for this trip?

A Let's see. Did we meet them in New York or -- we flew with a group, yes, from OAT. I believe it was in New York, yes. Yes.

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1 Brian Walsh 14  
 2 Q And did you return with this group as  
 3 well?  
 4 A Yes.  
 5 Q By "return," I mean from Kilimanjaro  
 6 to J.F.K.  
 7 A Yes.  
 8 MR. MEENAGH: Well --  
 9 A They all didn't, you know. We left  
 10 Kilimanjaro together. Some in Amsterdam, I know  
 11 some took other flights. There was some people  
 12 from the original group who did fly back to  
 13 New York.  
 14 MR. MEENAGH: Just so we are  
 15 clear, you said did you fly back to  
 16 New York, because and Brian and his  
 17 wife ended up taking the later flight  
 18 because of this accident, so they  
 19 didn't fly back to New York with the  
 20 group.  
 21 MR. BANINO: Right.  
 22 A Right.  
 23 Q Okay.  
 24 A Yeah. We were supposed to.  
 25 Q Thanks.

Page 15

1 Brian Walsh 15  
 2 And did you have any problems on your  
 3 flights from New York to Kilimanjaro?  
 4 A No.  
 5 Q What did you do in Kilimanjaro during  
 6 this two-week trip?  
 7 A Well, we didn't stay in Kilimanjaro,  
 8 we were with this group.  
 9 We went to Arusha City, called  
 10 "Arusha," and from Arusha we went to Serengeti and  
 11 some other parks in Tanzania.  
 12 Q What type of activities did you do  
 13 during this trip?  
 14 A A lot of sightseeing, mostly safari.  
 15 Q Was it the type of safari where you're  
 16 in a Jeep and you're driving through and you view  
 17 the animals?  
 18 A Right, yes.  
 19 Q Did the four of you stay together  
 20 throughout this two weeks?  
 21 A Yes.  
 22 Q About how many people were in the OAT  
 23 group during these two weeks?  
 24 A I guess there were probably about --  
 25 approximately twenty, twenty-five maybe.

Page 16

1 Brian Walsh 16  
 2 Q And about how many of those twenty  
 3 people returned on the Kilimanjaro to Amsterdam  
 4 flight?  
 5 A I think most of them, if I recall  
 6 correctly.  
 7 As I said, in Amsterdam some went to  
 8 other flights.  
 9 Q What time was your flight from  
 10 Kilimanjaro to Amsterdam?  
 11 A I believe it was -- it was in the  
 12 morning. It was relatively early in the morning,  
 13 I believe. I can't recall the exact time.  
 14 Q And do you recall about how long the  
 15 flight was to Amsterdam?  
 16 A Well, we had -- let's see.  
 17 We actually flew in from Kilimanjaro,  
 18 we actually flew to another -- I'm trying to think  
 19 of the name of the town right on the coast of  
 20 Africa.  
 21 We flew there first and picked up some  
 22 passengers and then flew to Amsterdam. If I had a  
 23 map, I could tell you the city.  
 24 Q It was another city.  
 25 A It was another city.

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1 Brian Walsh 17  
 2 Q On the way to Amsterdam.  
 3 A Yes. It was in Africa.  
 4 Q And about what time did you arrive in  
 5 Amsterdam?  
 6 A Let's see. Amsterdam time, I thought  
 7 it was approximately maybe 10:30, 11 o'clock in  
 8 the morning, I believe.  
 9 Q So this was an overnight flight?  
 10 A No, it wasn't overnight flight.  
 11 Q With the time change it was the same  
 12 day?  
 13 A It was the same day, yes.  
 14 Q Did you have any problems during that  
 15 flight at all?  
 16 A From Kilimanjaro to Amsterdam?  
 17 Q Right. With the stopping.  
 18 A No.  
 19 Q Nothing unusual happened?  
 20 A No.  
 21 Q Did you sit with your wife or next to  
 22 your wife?  
 23 A Yes.  
 24 Q Do you recall about what time your  
 25 flight was scheduled to leave from Amsterdam to



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1 Brian Walsh 18  
 2 J.F.K.?  
 3 A Well, I remember it was about a three-  
 4 and-a-half or four-hour layover, so I guess it was  
 5 scheduled to depart sometime in the afternoon.  
 6 Q Early afternoon?  
 7 A Yes.  
 8 Q Was it in fact a three-and-a-half or  
 9 four-hour layover?  
 10 A Well, it turned out to be a little bit  
 11 more of that because of my injury, but yes, it  
 12 was.  
 13 Q What I mean is, it wasn't shorter than  
 14 that say because your flight was delayed.  
 15 A No. It arrived on time to the best of  
 16 my knowledge.  
 17 Q Did you have anything to eat on the  
 18 flight from Kilimanjaro to Amsterdam?  
 19 A I don't recall.  
 20 Q Do you recall if there were any meal  
 21 services done on the flight?  
 22 A I don't recall.  
 23 Q Did you drink anything on the flight?  
 24 A I don't believe I did but I'm not  
 25 sure.

Page 19

1 Brian Walsh 19  
 2 Q After you landed in Amsterdam, did you  
 3 go through customs at that time?  
 4 A No, I don't believe we did.  
 5 Q Do you recall about how far it was  
 6 from the gate that you arrived at from Kilimanjaro  
 7 to your departure gate for the J.F.K. flight?  
 8 A It was quite a distance because we --  
 9 I don't know exactly. It wasn't in the vicinity  
 10 where we came in from Kilimanjaro, it was in  
 11 another part of the airport.  
 12 Q Did you go straight from the arrival  
 13 gate from your Tanzania flight to your departure  
 14 gate for the J.F.K. flight?  
 15 A No.  
 16 Q What did you do?  
 17 A We got something to eat. We stayed in  
 18 like the little cafe area for a while, got  
 19 something to eat, walked around, did some window  
 20 shopping, read.  
 21 Q Do you recall where this area was in  
 22 the airport, this cafe area?  
 23 A It was -- not exactly, but it wasn't  
 24 far from where we departed from Kilimanjaro.  
 25 When we got off the airport, you come

Page 20

1 Brian Walsh 20  
 2 out and there is an area there.  
 3 Q So it was closer to the arrival gate  
 4 from Tanzania than it was to the departure gate to  
 5 J.F.K.  
 6 A Yes.  
 7 Q Now, who was with you at that time,  
 8 and I mean during that three-and-a-half, four  
 9 hours?  
 10 A My wife and Jennifer Costabile.  
 11 Q What had happened to Miss McGowan?  
 12 A She left to get a cab, I believe, to  
 13 go downtown to Amsterdam. She was going to stay  
 14 for a couple of days and visit Amsterdam.  
 15 Q Did you see Ms. McGowan again prior to  
 16 arriving back in New York?  
 17 A No.  
 18 Q What did you have to eat if you can  
 19 recall during that three-and-a-half to four  
 20 hours?  
 21 A I had a sandwich, soft drink.  
 22 Q Did you have any alcoholic beverages?  
 23 A No, I did not.  
 24 Q Did you take any medications at the  
 25 time?

Page 21

1 Brian Walsh 21  
 2 A No, I did not.  
 3 Q Were you taking any vitamins at the  
 4 time?  
 5 A No.  
 6 Q I see that you are wearing glasses  
 7 today.  
 8 Were you wearing your glasses that  
 9 day?  
 10 A Yes.  
 11 Q Are those for nearsightedness,  
 12 farsightedness?  
 13 A They are bifocals.  
 14 Q What are the two different lenses?  
 15 A The numbers?  
 16 Q Well, if you know the numbers --  
 17 A I don't know the numbers offhand.  
 18 Q Is one for nearsightedness and one for  
 19 farsightedness?  
 20 A Yes. One is for reading.  
 21 Q About how long prior to the departure  
 22 did you head to the departure gate for your flight  
 23 to J.F.K.?  
 24 A I believe it was maybe -- headed there  
 25 approximately forty-five minutes to an hour to the

Page 22

1 Brian Walsh 22  
 2 best of my recollection.  
 3 Q Was there an announcement over a  
 4 loudspeaker which caused you to head toward the  
 5 departure gate --  
 6 A No.  
 7 Q -- or when you thought it was just  
 8 about time to go?  
 9 A Right.  
 10 Q About how long did it take you to get  
 11 there to the departure gate?  
 12 A I can't recall exactly. It was a good  
 13 walk. Timewise I don't recall exactly.  
 14 Q About how far ahead of the scheduled  
 15 departure did you arrive at the departure gate?  
 16 A I think about maybe forty-five  
 17 minutes, possibly an hour.  
 18 Q This is in the area of the departure  
 19 gate.  
 20 A Excuse me?  
 21 Q This is to the departure gate.  
 22 A Where I arrived.  
 23 Q Yes.  
 24 A Yes.  
 25 Q Okay. Do you recall what gate number

Page 23

1 Brian Walsh 23  
 2 it was?  
 3 A Offhand I don't recall the exact  
 4 number.  
 5 Q What did you do when you arrived at  
 6 the departure gate?  
 7 A We just sat. The three of us sat and  
 8 talked.  
 9 Q Did you sit in the area around the  
 10 departure gate?  
 11 A Yes.  
 12 Q Could you see the gate agent and/or  
 13 the boarding desk from where you were sitting?  
 14 A As I arrived you kind of could. The  
 15 way I was sitting was -- I had my back to it so I  
 16 couldn't see it directly.  
 17 MR. BANINO: Can we mark these as  
 18 exhibits (indicating).  
 19 (Whereupon, seven photographs were  
 20 marked Defendant's Exhibits B through  
 21 H for Identification, as of this date,  
 22 by the reporter.)  
 23 Q Mr. Walsh, I'm showing you photographs  
 24 which have been marked as Defendant's Exhibits B  
 25 through H.

Page 24

1 Brian Walsh 24  
 2 Can you identify these for the  
 3 record?  
 4 A Yes.  
 5 Q What are these photos?  
 6 A These are photos of the area I was  
 7 sitting in and the bar that I tripped over in the  
 8 area.  
 9 Q Who took those photos?  
 10 A Carol McGowan.  
 11 Q When did she take those photos?  
 12 A She took those when she returned to  
 13 New York from Amsterdam, which was -- I'm not  
 14 exactly sure but it was within a couple of days of  
 15 the accident.  
 16 Q So these were not taken the day that  
 17 you fell.  
 18 A No, they were not.  
 19 Q Do you know whether this is the same  
 20 gate that you departed from?  
 21 A Yes, it is.  
 22 Q How do you know that?  
 23 A I recall it and I remember D-7. I  
 24 believe that was the gate.  
 25 Q How did she know where to take

Page 25

1 Brian Walsh 25  
 2 photos?  
 3 A I told her.  
 4 Q What did you tell her?  
 5 A You know, the gate that I departed,  
 6 that we were departing from.  
 7 Q What was the conversation you had with  
 8 her?  
 9 A Well, she had called my wife actually  
 10 just to see how things went, and we explained the  
 11 accident, what happened, and she said that she  
 12 would go and take pictures of the area.  
 13 Q And why was that?  
 14 A Because I asked her to because I  
 15 thought it was unusual that this bar was sticking  
 16 out in the area.  
 17 Q What did you intend to do with those  
 18 photos?  
 19 A Well, I just -- if anything came up,  
 20 I wanted to have evidence that in fact there was  
 21 a bar there, what it looked like, because I  
 22 thought it was unusual that a bar should be  
 23 sticking out.  
 24 Q You said "if anything came up."  
 25 What would come up?



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1 Brian Walsh 26

2 A Depending on my injury, how bad it  
3 was, if there was a lawsuit.

4 Q Filed by you?

5 A Filed by me.

6 Q Do those photos as best you recall  
7 accurately depict what it looked like on the day  
8 that you fell?

9 A Yes.

10 Q Now, showing you what's been marked as  
11 Exhibit B, there appear to be chairs on one side  
12 of the bar.

13 MR. MEENAGH: Which is B? I'm  
14 sorry.

15 MR. BANINO: The first one.

16 MR. MEENAGH: Okay.

17 Q There are chairs on one side of the  
18 bar.

19 Was that the area that you said you  
20 were sitting in?

21 A Yes.

22 Q Maybe not necessarily those exact  
23 chairs or --

24 A Yes. We were sitting right there  
25 (indicating).

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1 Brian Walsh 27

2 Q So you were sitting in those chairs  
3 that are depicted in that photo.

4 A That's correct.

5 Q About how long were you sitting in  
6 those chairs?

7 A From the time we arrived at  
8 approximately half an hour to forty-five minutes.

9 Q Just to describe the scene, looking at  
10 that Exhibit B, did you come from the area where  
11 the people are standing to sit down when you  
12 arrived at the gate?

13 A I came from their left. Like people  
14 here (indicating), I came from their left.

15 Q So from where the people are standing,  
16 that side.

17 A Yes, yes, and walked in this way  
18 (indicating).

19 Q And you sat down in those chairs that  
20 are depicted in that photo.

21 A That's correct.

22 Q And you say to the left.

23 By that you mean from the direction  
24 that's within the photo as opposed to from an area  
25 looking at the photo.

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1 Brian Walsh 28

2 A From the area I was sitting.

3 Q Right?

4 A Facing forward, sitting down, it would  
5 be my left as I was sitting.

6 Q So what you're saying is, and this is  
7 just so the record is clear because the record  
8 can't see us pointing, but what you're saying is  
9 coming from outside the photo towards the area  
10 that's depicted in the photo.

11 A That is correct.

12 Q Okay. Thank you.

13 MR. MEENAGH: Just so the record  
14 is clear, when you say "outside the  
15 photo," I think he was indicating  
16 outside of the left side of Exhibit B  
17 is what he was indicating.

18 A Yes.

19 MR. MEENAGH: Just so we are clear  
20 on that.

21 MR. BANINO: Okay. Then I was  
22 mistaken.

23 Q So you're saying that you came from  
24 an area that is depicted to the left of the  
25 photo.

Page 29

1 Brian Walsh 29

2 A That's correct.

3 Q Is there a hallway there?

4 A Is there a hallway there.

5 Q Yes.

6 How did you get to that area?

7 A Well, there is a -- I mean, it was --  
8 yeah, I mean, there is a big open space.

9 Looking at the photo, if you were to  
10 expand the photo, it's very wide, and we came  
11 from the left of that photo from there  
12 (indicating).

13 Q Where is the actual departure door in  
14 relation to that Exhibit B?

15 MR. MEENAGH: That's this one  
16 (indicating).

17 A I believe it's -- if you -- straight  
18 ahead and to the left of this sign, the D-7 sign.  
19 I don't know if it's over here (indicating). No,  
20 I believe it's there (indicating).

21 Q Taking a look at Exhibit C, do you see  
22 the departure door in that photo?

23 A I can't see the door, no, I can't see  
24 the door.

25 Q Is the area that you headed to for

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1 Brian Walsh 30  
2 departure depicted in that photo?

3 MR. MEENAGH: You mean at the time  
4 of his accident, or when you say head  
5 toward, I'm not sure what you're  
6 getting at.

7 Q We are talking about where the  
8 departure door is, where the door to get on the  
9 aircraft is, where is that in relation to this  
10 photo, can you see it in this photo?

11 A I can't see the exact door, no.

12 Q Where would it be in relation to this  
13 photo?

14 A It would be to -- it would be directly  
15 ahead in -- I don't know what direction.

16 Q You're referring to the middle of the  
17 photo to the right of the seating area?

18 A To the right of the seating area --

19 Q Where the people are standing.

20 A Yes.

21 MR. MEENAGH: But ahead of that  
22 he's saying.

23 A But ahead.

24 MR. BANINO: I understand that.

25 Q Is there another seating area right

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1 Brian Walsh 31  
2 next to that that's not depicted in this photo  
3 which is similar to the one that is depicted in  
4 this photo?

5 A Not similar. There are seats, there  
6 were seats facing the seats that we were sitting  
7 in that are in this photo.

8 Q Are there also seats to the left of  
9 the people who are sitting in those seats that are  
10 reflected in the photo?

11 A I don't recall that. I believe there  
12 were but I don't recall that exactly.

13 MR. MEENAGH: When you say "to the  
14 left," you mean to their left as they  
15 are sitting in the seat, is that what  
16 you meant?

17 MR. BANINO: Yes.

18 MR. MEENAGH: Not to the left in  
19 the photo.

20 MR. BANINO: Yes, their left.

21 MR. MEENAGH: Okay.

22 Q Now, what caused you to get up from  
23 your seat while you were in the boarding area?

24 A To get on line to depart.

25 Q Had there been an announcement on the

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1 Brian Walsh 32  
2 loudspeaker or some other announcement made that  
3 the flight was boarding?

4 A Yes.

5 Q So if you can, just describe to us  
6 what happened from when that announcement happened  
7 to when you fell.

8 A There were actually a couple of  
9 announcements. We didn't get up right away after  
10 the initial announcement. When we did get up, I  
11 picked up two pieces of carry-on luggage, knapsack  
12 that I put over my right shoulder. I was holding  
13 a bag in my left hand.

14 I got up out of my seat, turned to the  
15 left, and then turned to the left again at the end  
16 of the row of seats to get on the line, and I  
17 tripped. I fell forward, landed on my right  
18 elbow.

19 Q Now, did you go past that bar when you  
20 went to sit down?

21 A No.

22 Q Had you seen that bar before you sat  
23 down?

24 A No.

25 Q Looking at Exhibits E, I guess D and

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1 Brian Walsh 33  
2 E, can you make a guess as to about how far that  
3 bar extends beyond the seats?

4 (Whereupon, the witness reviews  
5 photographs.)

6 A I would say approximately four to six  
7 feet. Four feet.

8 Q Looking at Exhibit C, there are about  
9 five or six seats shown in this photo.

10 Which seats were you sitting in?

11 A I was sitting in the middle of that  
12 area.

13 Q Were there other people sitting in  
14 those seats, the other seats?

15 A My wife and Jennifer Costabile were.  
16 I don't recall if there were other people sitting  
17 there.

18 Q Where were they sitting in relation to  
19 you, were they to your left, to your right?

20 A They were to my right.

21 Q You said you were carrying two bags;  
22 is that correct?

23 A Yes.

24 Q You had a knapsack over your right  
25 shoulder?

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1 Brian Walsh 34  
 2 A Yes. It was one of those little  
 3 carry-on knapsacks, yes.  
 4 Q You said you had a second bag in your  
 5 other hand, or was it your right hand?  
 6 A No, it was my left-hand.  
 7 Q What was in that bag?  
 8 A Some things we had bought, a couple of  
 9 gifts we had bought.  
 10 Q What were those gifts?  
 11 A Let's see. I believe -- I don't  
 12 remember what was exactly in that bag.  
 13 I know one of the gifts was a couple  
 14 of little wooden animals, some tee shirts. I  
 15 don't recall exactly what was in the bag. Those  
 16 were some of the gifts we bought but I don't know  
 17 if they were in that bag or not.  
 18 Q Was it a shopping bag, or was it --  
 19 A Yeah, it was a shopping bag with  
 20 handles.  
 21 Q Like a paper or plastic shopping bag?  
 22 A Yes.  
 23 Q About how big was that bag?  
 24 A Maybe as big as a shopping bag you  
 25 would get in a food store (indicating). Maybe one

Page 35

1 Brian Walsh 35  
 2 foot by two feet, approximately.  
 3 Q Do you still have that shopping bag?  
 4 A No.  
 5 Q Do you recall throwing it out?  
 6 A I don't recall throwing it out. I  
 7 don't know what happened to it.  
 8 Q Among the three of you, what was the  
 9 order that you were walking towards the gate?  
 10 A I was first, my wife and Jennifer were  
 11 on my right and behind me.  
 12 Q Who was behind you, if you recall?  
 13 A My wife.  
 14 Q About how many announcements were  
 15 there before you boarded?  
 16 A (No response.)  
 17 Q You said there were several  
 18 announcements when you boarded the first time.  
 19 A I think there were two.  
 20 Q What class did you travel on that  
 21 flight, was it business class, was it economy  
 22 class?  
 23 A I didn't fly on that flight but --  
 24 Q What were you scheduled, economy?  
 25 A Economy, I guess.

1 Brian Walsh 36  
 2 Q Now, this was in July, correct?  
 3 A That's correct.  
 4 Q Were you wearing pants or shorts?  
 5 A That day I think I was wearing shorts.  
 6 I think. I'm not exactly sure but I think I was  
 7 wearing shorts.  
 8 Q What type of shoes were you wearing?  
 9 A I'm not exactly sure. I believe it  
 10 was kind of a -- I believe it was kind of an  
 11 enclosed sandal. I think. I'm not exactly sure  
 12 what I was wearing.  
 13 Q If it was this enclosed sandal, do you  
 14 still have those sandals?  
 15 A Yes, I think I do. I bought them  
 16 especially for the trip so --  
 17 Q Were they hiking sandals?  
 18 A Not necessarily.  
 19 Well, I guess you could use them for  
 20 that. I mean, I bought them especially for the  
 21 trip. Something that was going to be comfortable.  
 22 Q Now, when you tripped, what caused you  
 23 to trip?  
 24 And by that I mean, what happened to  
 25 your foot or leg that caused you to trip?

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1 Brian Walsh 37  
 2 A Just, it was like I hit something  
 3 solid. I was walking and just all of a sudden it  
 4 was like boom. It was like something took my legs  
 5 out from under me.  
 6 Q Did you step on the bar and lose your  
 7 footing?  
 8 A No.  
 9 Q Did you hook your foot underneath?  
 10 A Yes. It was underneath, I believe,  
 11 because it just kind of took my legs out. I  
 12 didn't step on top of the bar, no.  
 13 Q Do you recall which foot it was?  
 14 A I think it was my right. I'm not  
 15 exactly sure but I think it was my right.  
 16 Q In which direction did you fall?  
 17 A Forward.  
 18 Q Were you bumped or jostled at all?  
 19 A No.  
 20 Q Did you either land on or bump into  
 21 anybody as you fell?  
 22 A No. I landed directly on the floor.  
 23 Q I think you said you landed on your  
 24 right side; is that correct?  
 25 A On -- yes. As I fell, I turned just

1 Brian Walsh 38  
 2 slightly to my right, but I landed directly on my  
 3 right elbow.  
 4 Q So you didn't have your arm extended?  
 5 A No.  
 6 Q Do you remember where you were looking  
 7 at the time of the fall?  
 8 A I was looking forward toward the line  
 9 I was going to get on.  
 10 Q Were you talking to anybody at the  
 11 time?  
 12 A Not at the time I fell.  
 13 Q Were you talking to anybody prior to  
 14 your falling?  
 15 A As we got out of the seat.  
 16 Q Who were you speaking to?  
 17 A My wife.  
 18 Q Do you recall what you said to her?  
 19 A No.  
 20 Q Did you ever look down to see where  
 21 you were walking?  
 22 A No.  
 23 Q Did you see anybody else fall over  
 24 this bar?  
 25 A No.

1 Brian Walsh 39  
 2 Q Now, if you can, just briefly describe  
 3 what happened after you hit the ground when you  
 4 fell.  
 5 A Well, I hit the ground and I felt  
 6 immediate pain in my arm, and the, you know, my  
 7 wife came over and said are you okay. I said no.  
 8 And very shortly after that, I believe  
 9 it was airport security person that's around, he  
 10 had a uniform on, came over and asked me if I was  
 11 all right, and I said no.  
 12 And so he said, well stay right here.  
 13 As I kind of went to get up, I looked  
 14 down and noticed my arm was deformed, so I knew  
 15 immediately there was a break, and I had a lot of  
 16 pain, and I asked the security man if he could get  
 17 me a, you know, a cart.  
 18 I knew where the first aid station was  
 19 because it was on the way walking. I noticed it  
 20 in the time we were walking around.  
 21 So we waited, because I was concerned  
 22 about missing the flight, we waited for -- he told  
 23 me, he said, don't worry, the plane will not leave  
 24 until we get you straightened out.  
 25 And we waited, I don't know how long,

1 Brian Walsh 40  
 2 probably ten minutes, and the cart didn't come.  
 3 He was on his walkie-talkie trying to get us a  
 4 cart.  
 5 Finally I said, would you help me up  
 6 and help me down to the first aid station, because  
 7 I was concerned about missing the flight.  
 8 So he did. He walked me down with my  
 9 wife, Jennifer stayed at the waiting area, and  
 10 went to the first aid station and was seen by -- I  
 11 think it was a doctor there.  
 12 I asked him too if he could immobilize  
 13 it so I could get on my flight, and he said that  
 14 it was -- that I should go to the hospital, that  
 15 they had a good hospital downtown, that it  
 16 definitely looked like a break, I should be seen  
 17 down there, that it would be dangerous to fly back  
 18 without it being seen.  
 19 So I asked if --  
 20 MR. MEENAGH: Let him -- I mean,  
 21 you want him to keep going?  
 22 MR. BANINO: Yes, that's fine.  
 23 Q Go ahead.  
 24 A Okay. So I asked if somebody could  
 25 bring me down.

1 Brian Walsh 41  
 2 He said we could call you a cab, and,  
 3 you know, they did that.  
 4 I asked if it would be a problem when  
 5 I came back in terms of getting through security  
 6 and all that, and he said no, they would -- they  
 7 apparently took care of that somehow, but my wife  
 8 and I took a cab down to the University Hospital  
 9 in Amsterdam. I was seen by somebody there.  
 10 I knew when the next flight was so I  
 11 said if you could do something quick enough so I  
 12 could get my flight, I think the flight was two or  
 13 three hours later, approximately.  
 14 They took an X-ray, they showed me the  
 15 X-ray that was -- he said it was a pretty severe  
 16 break, that if I was going to stay there, I would  
 17 need surgery and they would have to put screws in,  
 18 but, you know, I wanted to get back to New York.  
 19 So they immobilized it, they put a  
 20 cast on it, and he gave me some kind of medication  
 21 for the pain. It wasn't -- I forget what it was.  
 22 It wasn't very strong.  
 23 So we took a cab back to the airport  
 24 and the three of us departed.  
 25 Q Just to go back through some of that,



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1 Brian Walsh 42  
 2 I just have some followup questions.  
 3 A Sure.  
 4 Q First, you said an airport security  
 5 person came over.  
 6 A Any that's who it was. It was a  
 7 uniform.  
 8 Q Had you seen him before you fell, I  
 9 mean, did you see him posted there somewhere?  
 10 A No, I don't recall seeing him. He  
 11 came fairly quick though and asked me if I was all  
 12 right.  
 13 Q Did you get his name?  
 14 A I did not. I did not get his name,  
 15 no.  
 16 Q Do you recall --  
 17 A I filed --  
 18 Q -- what he looked like?  
 19 A He was a fairly young guy, fairly big  
 20 guy. I don't remember exactly what he looked  
 21 like.  
 22 Q Was he white?  
 23 A Yes.  
 24 Q What color hair did he have?  
 25 A Dark.

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1 Brian Walsh 43  
 2 Q Was it long hair, short hair?  
 3 A I think it was short.  
 4 Q Do you recall about how tall he was?  
 5 A No. It would only be a guess. But he  
 6 wasn't short. I'd say approximately six feet  
 7 possibly.  
 8 Q Now, you said he helped you get up; is  
 9 that correct?  
 10 A Yes.  
 11 Q About how long were you on the ground  
 12 before he helped you up?  
 13 A I'd probably say approximately ten  
 14 minutes, maybe.  
 15 Q I think you said you saw that your arm  
 16 was deformed.  
 17 A Um-hm.  
 18 Q When did you notice that?  
 19 A As I sat up, I looked at the arm,  
 20 because I was in a lot of pain, and I noticed that  
 21 there was a deformity.  
 22 Q This was while you were still on the  
 23 ground?  
 24 A Yes.  
 25 Q Prior to being helped up?

1 Brian Walsh 44  
 2 A Yes. As I sat up, yes.  
 3 Q What looked deformed about your arm?  
 4 A The bone right at the joint, it was  
 5 kind of pushed in, and the inside, it was swollen  
 6 and kind of pushed out, you know.  
 7 Q Were you wearing long sleeves or short  
 8 sleeves at the time?  
 9 A Short sleeves.  
 10 Q How did you know it was broken?  
 11 A Well, I'm a high school football  
 12 coach. I have seen a lot of breaks. It looked  
 13 like broken to me and looked like a deformity, and  
 14 in my experience with dealing with athletic  
 15 injuries.  
 16 Q After he helped you get up, how long  
 17 was it before you walked to the first aid  
 18 clinic --  
 19 A It was pretty --  
 20 Q -- or did you get up to go?  
 21 A We pretty much got up, and I asked if  
 22 he would walk down with me because I was feeling  
 23 a little woozy, but I wanted to see if we could  
 24 try to make the flight. As it turned out, we  
 25 didn't.

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1 Brian Walsh 45  
 2 Q Did you take your bags with you when  
 3 you went to the clinic?  
 4 A I don't think so. I mean, I didn't  
 5 carry any.  
 6 Q Do you recall if you left them with --  
 7 A Jennifer?  
 8 Q -- Miss Costabile, yes, Jennifer?  
 9 A I think that's what happened. I think  
 10 she stayed at the gate.  
 11 Q Do you recall the doctor's name that  
 12 you saw at the clinic?  
 13 A I don't, no.  
 14 Q Can you describe what he looked like?  
 15 A Middle-aged, dark hair, that's about  
 16 the best.  
 17 Q White?  
 18 A Yes, he was white.  
 19 Q When you say "middle-aged," about --  
 20 just as a guess?  
 21 A Oh, maybe forty-five. Maybe.  
 22 Approximately.  
 23 Q Now, did he treat you at all before  
 24 you left for the hospital?  
 25 A No. He examined my arm, said it

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1 Brian Walsh 46  
2 definitely looked like a fracture, and that it  
3 would be dangerous to get on the plane without  
4 being seen by -- he said he didn't have anything  
5 in the first aid station to immobilize it.

6 I asked him if he could immobilize it  
7 and get directly back, because again I was  
8 concerned about missing my flight.

9 Q Why did he say it would be dangerous?

10 A He said you could do nerve damage. He  
11 said if it's a break, moving without it being  
12 immobilized would cause further damage.

13 Q About how long were you in the clinic?

14 A Oh, let's see. I'd say approximately  
15 fifteen minutes. It wasn't very long.

16 Q Was it then that you went to get a cab  
17 to the hospital?

18 A Yes. I decided -- I had to decide  
19 whether to get a cab or not. After he said it  
20 would be dangerous, my wife and I said we better  
21 go get it treated.

22 Q How did you get that cab?

23 A I think they called for me because  
24 they said they could call a cab, which I thought  
25 was kind of unusual. I asked if they could

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1 Brian Walsh 47  
2 provide transportation and they said they could  
3 call a cab.

4 Q By "they," you mean the people in the  
5 clinic.

6 A Yes.

7 Q Did you walk back to the gate before  
8 getting in the cab?

9 A No, no.

10 Q Did you speak to Jennifer before  
11 getting in the cab?

12 A I did not, my wife did, explained what  
13 we were doing.

14 Q Was this while you were being  
15 examined, or was this on your way to the cab, when  
16 was this?

17 A Both, both, yes. My wife kind of kept  
18 Jennifer because she was waiting for us and let  
19 her know what was happening.

20 Jennifer actually -- my wife told her  
21 to go ahead if she could catch the plane, but they  
22 wouldn't let her on the plane at that point  
23 because it was I guess too close to departure  
24 time, so she stayed with our baggage and flew back  
25 with us later on and we all went back together.

1 Brian Walsh 48  
2 We suggested that she go, because once  
3 we decided to go to the hospital, we suggested she  
4 go back, but at that point she tried to but they  
5 wouldn't let her on the plane.

6 Q Did you speak to anybody at KLM before  
7 heading to the hospital?

8 A I did not. My wife I believe did in  
9 terms of inquiring about other flights.

10 Q Do you know who she spoke to?

11 A I don't know. I don't know.

12 Q Do you know where those people were  
13 located, in other words, was it at the departure  
14 gate, was it at the ticketing desk?

15 A I think it was possibly at another  
16 ticketing desk. I'm not sure. I don't recall.

17 Q What did they tell her?

18 A They told her there was another  
19 flight that evening, so before we left the  
20 airport, we knew there was another flight later  
21 on.

22 Q Did you go straight from the airport  
23 to the university hospital?

24 A Yes.

25 Q Were you seen immediately at the

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1 Brian Walsh 49  
2 hospital, or did you have to wait?

3 A No, we were seen. We didn't have to  
4 wait very long at all.

5 The first-aid, I guess the doctor at  
6 the first-aid station in the airport had called  
7 ahead and said we were coming, so when we arrived,  
8 they saw us fairly quickly.

9 Q About how long were you at the  
10 hospital?

11 A Maybe approximately an hour I'd say.  
12 I don't recall exactly. It was long enough they  
13 took an X-ray, showed me the X-ray, and put a  
14 cast on my arm.

15 Q Did you have to pay any money at that  
16 time to the hospital for your treatment?

17 A No, we showed them our insurance  
18 cards.

19 Q Any co-pays or anything like that?

20 A I don't think so but I don't recall  
21 exactly.

22 Q Did the doctor say that you would need  
23 further treatment in the U.S.?

24 A Yes.

25 Q What did he say?



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Brian Walsh 50

A He said that -- he said if you were going to be here, I would treat that with -- we'd have to do surgery and I would have to put screws in. I would have to use screws to stabilize the joint.

Q What kind of cast did they put on your arm?

A It was -- I believe it was like a half cast and then an Ace bandage, you know, to kind of immobilize it. I don't think it was a full cast but I don't remember exactly, but it was at least a partial cast.

Q Was it a plaster cast or was it a wrap cast?

A No, it was like a wrap.

Q Like an Ace bandage --

A Well --

Q -- type cast?

A It was a hard, I mean, it was hard and -- I think it was a full cast, it was a full cast, but it was the new material they use. It wasn't like the old plaster where it's wet and it has to --

Q Okay. And just to describe for the

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Brian Walsh 51

record, where on your arm did the cast cover?

I know you said it was kind of a partial cast, but where exactly, what exactly do you mean by a "partial cast"?

A It covered from my wrist to underneath my armpit.

Q Okay. Were you put in a sling?

A Yes.

Q How did you get back to the airport?

A A cab.

Q Did the doctor give you any documents or medical records or anything else when you left?

A Let's see. I think he might have given me the copy of the X-rays. I'm not sure.

MR. MEENAGH: The actual films or a report?

A I don't remember. I don't remember that.

MR. BANINO: Mr. Meenagh, I would obviously like those produced.

MR. MEENAGH: Yeah. I mean, I don't have them, but obviously --

A Yeah. They are either over there but

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it's possible that --

MR. MEENAGH: Hold on.

A -- they are in Danbury.

MR. MEENAGH: Don't worry about that.

We will --

MR. BANINO: Okay.

(REQUEST)

Q Did you take a cab back to the airport?

A Yes.

Q Did you catch that next flight that you were talking about?

A Yes, yes.

Q Did it depart from the same gate?

A I don't believe it did.

Q Do you recall what gate that departed from?

A No, I don't recall, I don't recall.

Q Was it in the area of that other gate?

A I would just be guessing. I don't know.

Q I think you testified that it was gate

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Brian Walsh 53

D-7.

Was it in the D gates?

A I think it was but I don't. You know, I'm not exactly sure.

Q Where was Miss Costabile while you were at the hospital?

A She was waiting at the airport.

Q How did you locate her when you got to the airport?

A My wife called her on her cell and we met up.

Q So she had a cell phone and your wife had a cell phone.

A Yes.

Q I take it you all traveled on that flight, the three of you.

A Yes.

Q Did you sustain any other injuries other than the elbow fracture?

A No, I did not.

Q Now, looking at I guess Exhibit F, can you make an estimation as to about how tall off the ground that bar is?

(Whereupon, the witness reviews

1 Brian Walsh 54  
 2 photograph.)  
 3 A I'd say it's maybe, I don't know,  
 4 maybe eight inches, ten inches.  
 5 Q Does it look similar in these photos  
 6 as it did the day that you fell over it?  
 7 A Yes.  
 8 Q Have you ever seen this type of I  
 9 guess bar in an airport before?  
 10 A No. I thought it was unusual.  
 11 Q I take it counting your previous trip  
 12 to Amsterdam and your initial flight over to  
 13 Kilimanjaro you have been at this particular  
 14 airport three times prior to your fall?  
 15 A Yes, when I flew.  
 16 Q Were you there any other times other  
 17 than those three times?  
 18 A No, no.  
 19 Q Okay. Did you have any problems on  
 20 any of those other travels?  
 21 A No.  
 22 Q Had you ever departed out of this gate  
 23 before in those three other travels?  
 24 A No.  
 25 Q Had you ever seen this bar before in

1 Brian Walsh 55  
 2 any of your other travels?  
 3 A No.  
 4 Q Did you have any problems on your  
 5 flight unrelated to your elbow, did you have any  
 6 other problems on your flight from Amsterdam to  
 7 J.F.K.?  
 8 A No.  
 9 Q How did you get home from the airport  
 10 from J.F.K.?  
 11 A Jennifer Costabile's father picked us  
 12 up.  
 13 Q How long after you arrived home did  
 14 you seek medical treatment?  
 15 A I called the next day. I called  
 16 Danbury Orthopedic Associates.  
 17 Q Why Danbury Orthopedic Associates  
 18 rather than some other doctor?  
 19 A Well, I had dealt with them before  
 20 through my coaching. I coached in Brewster. It's  
 21 the next town. I had students, players have seen  
 22 doctors there. I had surgery there. I had  
 23 Achilles tendon surgery there.  
 24 Q Other than the Achilles tendon  
 25 surgery, had you been treated there for anything

1 Brian Walsh 56  
 2 else?  
 3 A Yes. I had a rotator cuff surgery  
 4 there.  
 5 Q Which rotator cuff did you have a  
 6 problem with?  
 7 A My right shoulder.  
 8 Q Which Achilles did you have treated?  
 9 A There? I believe it was my right one.  
 10 I ended up having both operated on but one at a  
 11 different place.  
 12 Q So other than the rotator cuff and  
 13 the Achilles surgery have you had any other  
 14 treatment other than the elbow at Danbury  
 15 Orthopedics?  
 16 A No.  
 17 Q When was the Achilles surgery there?  
 18 A Let's see. It was 19 -- I believe it  
 19 was February of 1987, I believe.  
 20 Q When was your other Achilles treated?  
 21 A Let's see. 19 -- I believe it was the  
 22 spring of -- March of -- let's see. When would it  
 23 have been.  
 24 March of '95 I think it was, or March  
 25 of '96. It was either '95 or '96.

1 Brian Walsh 57  
 2 Q Do you recall where you had that  
 3 treated?  
 4 A That was treated -- I had surgery at  
 5 Putnam Community Hospital. It was through the  
 6 Somers Orthopedic Group.  
 7 Q And about when was your rotator cuff  
 8 treatment?  
 9 A That was -- let's see. The summer of  
 10 200 -- was it 5? I believe it was the summer of  
 11 2005, or it could have been 2004. I'd have to  
 12 look it up.  
 13 Q Have you had any other surgeries?  
 14 A Yes, I have.  
 15 Q What are those other surgeries?  
 16 A Throughout my life?  
 17 Q Yes.  
 18 A I had a surgery on my knee. I had to  
 19 remove bone spurs.  
 20 Q When was that?  
 21 A That was in 196 -- November of 1964.  
 22 I had surgery on my right elbow in  
 23 December as a result of an accident, December of  
 24 1966, and also on my right elbow in November of --  
 25 I think it was November, approximately November of

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Brian Walsh 58

'67.

Q Did both surgeries arise out of the same accident?

A Yes.

And -- I'm trying to think. I might have had one more in '6 -- let's see, '68, I believe. I'd have to check on that.

Q But, again, that was your right elbow?

A Yes.

Q Any other surgeries on your right elbow?

A No.

Q What type of surgery was it on your right elbow, was it different surgeries each time?

A It was -- the initial one was a result of a break from being hit by a car, so it was to just put the -- it was at the Peekskill Hospital, it's now called "Hudson Valley Hospital." It was pretty much they just sew up and repair some damage.

And then the other two were kind of corrective at Columbia Presbyterian Hospital to

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improve the range of movement.

Q These are the two surgeries in '67 and '68?

A Right.

Q Was any hardware put in your elbow, and by that I mean any screws, plates, mesh, during those three surgeries?

A I don't recall. Initially, no. I know with the first one, no. After that I'm not sure.

Q You're not sure if you had any metal put in your elbow to stabilize?

A Right. There could have been screws but I'm not sure. I don't think so. I don't think so. I don't think there was any hardware put in.

Q Do you recall any hardware coming out?

A No.

Q So on the day of the fall, did you have any screws or plates in your elbow?

A I don't -- no, I don't think I did, no.

Q Any other surgeries?

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Brian Walsh 60

A Yes. I had a prostatectomy.

Q About when?

A That was in 2004. November of 2004.

Q Any other surgeries?

A Not that I recall.

Tonsillectomy when I was five years old.

Q Any hip surgery?

A No.

Q Any hip problems?

A No.

Well, yes. Correct that. I had a non-displaced fracture of my hip.

Q When was that?

A That did not require surgery. That was in 199 -- I believe it was 1992. I think it was '92 or '93.

Q How was that treated?

A That was treated with just I was on crutches, and then, you know, there was no surgery.

Q About how long were you on crutches?

A Maybe a week, ten days.

Q You mentioned that you had rotator

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cuff surgery on the right shoulder.

A Yes.

Q What caused that?

A Just wear and tear. I was an athlete. They said it was probably caused from my -- just activity over the years. I was a quarterback. It's common. I had a spur that cut into the cuff.

Q Did that limit you from any activities, that rotator shoulder surgery?

And I mean from the time of the surgery to let's say when this fall occurred.

A No. Once I rehabbed it, I did exercises that they prescribed, I was fine.

Q How long was the rehabilitation for that injury?

A That was approximately six weeks.

Q Prior to your fall in Amsterdam, did you have arthritis in your right elbow?

A Yes, I was told I did.

Q Who told you that?

A I was told that by -- let's see. Who told me that.

Well, I wasn't told that directly at

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Brian Walsh 62  
the time, I was told that by a doctor years before that. I probably would have some at some point, you know, when I had the surgery and I was being treated by a doctor down at Columbia Presbyterian.

Q Okay. But do you know if you in fact had arthritis in your right elbow prior to this fall?

A No, no. I mean, I was never diagnosed prior to the fall.

Q Did you have any problems with your right elbow?

A Other than I lacked some range of motion.

Q Any pain?

A About fifteen degrees. Occasional. If I did something, you know, very strenuous.

Q How long have you had that problem, during the entire time from the -- let's say 1968 when the last surgery to your fall in Amsterdam?

A In terms of range of motion, yes.

Q And the pain that you mentioned?

A Yes. I mean, the pain was, again, if I did something very heavy.

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Brian Walsh 63  
Q Who was your primary care physician at the time of the accident?

A Who did I see for check-ups and things like that?

Q Correct.

A Dr. Chang.

Q Did you call him or speak to his office in connection with this injury --

A No.

Q -- prior to treating at Danbury?

A No.

Q About when was the first time you saw Dr. Chang after this accident?

MR. MEENAGH: For any reason?

MR. BANINO: Yes.

A For any reason? Let's see. When did I see him again after the surgery, or after this accident.

Q Approximately.

A Let's see. Maybe six, eight months. I don't recall really.

Q A number of months but less than a year.

A I'm not even sure if it was less than

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Brian Walsh 64  
a year. I'd have to go back and look, but I see him if I have -- if I saw him for a cold, you know, for congestion in my chest. He did a PSA, I think he did a PSA after my surgery. I don't recall.

Q Okay. Now, you said you -- I believe you said that you called Danbury Orthopedics the day after you returned home; is that correct?

A I believe it was Sunday I called, yes.

Q How soon after that were they able to see you?

A I think they saw -- I think they saw me on Monday. I think they were able to see me that next day.

I believe I was operated on Wednesday. I think that was the, you know.

Q Which doctor did you see?

A DiGenaro, I believe. An Italian fellow. I had never seen him before but they said he was a doctor who specialized in extremities, upper body extremities.

Q And do you recall what Dr. DiGenaro said to you that first appointment?

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A He said I would definitely need surgery. He explained what he was going to do, which was to put a piece of metal to stabilize it, some screws.

Q Did he say anything else?

A I don't recall him saying anything else.

Q I believe you just said that the surgery occurred about --

A I --

Q -- that Wednesday?

A Yes.

Q Do you know if Dr. DiGenaro performed that surgery?

A Yes, he did.

Q Was this inpatient surgery or were you held overnight?

A No, I was not held overnight.

Q Was the surgery performed at Danbury Orthopedics or somewhere else?

A It was at Danbury -- it was at -- let's say it was at like a ambulatory center. It wasn't at Danbury Center but they have an ambulatory center. I think that's what they call

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1 Brian Walsh 66  
 2 it.  
 3 Q Is Danbury Orthopedics located in  
 4 Danbury Hospital?  
 5 A They have a couple of different  
 6 offices.  
 7 Q Where did you see them?  
 8 A I saw them at -- I saw them  
 9 initially -- let's see. Did I see them initially  
 10 in the White Street office?  
 11 I don't recall where I initially saw  
 12 them. I know I had the surgery at the center  
 13 where they have offices.  
 14 Q Is it connected to Danbury Hospital?  
 15 And by "connected," I mean physically connected.  
 16 A Physically connected, no.  
 17 Q Now, after the surgery, were you  
 18 confined to bed at home, or were you able to move  
 19 around?  
 20 A I was able to move around, I wasn't  
 21 confined to bed.  
 22 Q What was your next medical treatment  
 23 after the surgery?  
 24 A I got stitches out. That was the next  
 25 treatment.

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1 Brian Walsh 67  
 2 Q About how long after the surgery was  
 3 that?  
 4 A I'd say maybe ten days, a week, ten  
 5 days, something like that, approximately.  
 6 Q Did you undergo any physical therapy?  
 7 A Yes, I did.  
 8 Q About how long after the surgery did  
 9 you begin your physical therapy?  
 10 A Let's see. I think approximately  
 11 about a month after. I think it was sometime in  
 12 August.  
 13 Q Who referred you to physical therapy?  
 14 A My surgeon.  
 15 Q Dr. DiGenaro?  
 16 A Yes.  
 17 Q Where did you undergo physical  
 18 therapy?  
 19 A At a place -- let's see. Place in  
 20 Hopewell Junction called --  
 21 MR. MEENAGH: Is it Full Range?  
 22 A Full Range Physical Therapy.  
 23 Q Did you see a particular doctor at  
 24 this Full Range?  
 25 A No. You know, I was prescribed some

Page 68

1 Brian Walsh 68  
 2 exercises and I was treated by a couple of  
 3 different people there.  
 4 Q Do you still undergo physical therapy?  
 5 A No.  
 6 Q About how long were you going to  
 7 physical therapy?  
 8 A I think approximately a month, I  
 9 believe.  
 10 Q How --  
 11 A I have to check.  
 12 Q How frequently during that month did  
 13 you go to physical therapy?  
 14 A Approximately three days a week I  
 15 believe it was. I'd have to check exactly but it  
 16 was something like that. It wasn't every day.  
 17 Q Why did you stop going to physical  
 18 therapy?  
 19 A That was all I could do in terms of --  
 20 in terms of what was prescribed. The doctor had  
 21 prescribed certain exercises and so forth.  
 22 Q Was this a decision that you made, or  
 23 was this something that the doctor recommended?  
 24 And by "this," I mean the stopping of  
 25 the physical therapy.

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1 Brian Walsh 69  
 2 A I don't recall. I don't recall.  
 3 My surgeon didn't necessarily  
 4 recommend any more, and the people at the physical  
 5 therapy place, that was pretty much it, I think.  
 6 I don't remember anybody -- I don't  
 7 remember there being a -- I think it was just kind  
 8 of decided that that was as far as the physical  
 9 therapy was going to take me as far as my  
 10 recovery.  
 11 Q You said it was decided.  
 12 Who was doing that deciding?  
 13 A I'm not sure. I'm not sure.  
 14 Q Did you treat with any doctors other  
 15 than Danbury Orthopedics for your elbow?  
 16 A No.  
 17 Q Do you know when the --  
 18 A Yes. Well, I mean, yes, I have seen  
 19 another doctor since.  
 20 Q Okay.  
 21 A Down at -- I got a second opinion  
 22 because I had persistent pain, and I wanted -- the  
 23 doctor at Danbury Orthopedics said the only thing  
 24 they could possibly do is go in and clean it up a  
 25 little bit, whatever that meant, but he said that



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1 Brian Walsh 70  
2 was pretty much all they could do, so I wanted an  
3 opinion and went down to the Hospital for Special  
4 Surgery.

5 I saw a doctor, I have seen him I  
6 believe it's twice, approximately two to three  
7 times, three times including the initial. He did  
8 an MRI.

9 Q When was this?

10 A This was -- when did I initially see  
11 him. I believe it was the spring of 2008, I  
12 think. I'm not sure.

13 Q And who did you see at the Hospital  
14 for Special Surgery?

15 A Let's see. What's that doctor's name.

16 Q If you don't recall --

17 A I don't recall his name right now.

18 Q That's fine.

19 How were you referred to the Hospital  
20 for Special Surgery?

21 A I knew it had a great reputation. I  
22 went online, I did some research in terms of what  
23 doctors who kind of specialized in upper body  
24 extremities, and I made an appointment.

25 Q So you more or less cold called the

1 Brian Walsh 72  
2 The initial visit was just an examination.

3 Q Sorry. You can continue.

4 A That's all right.

5 And after the cortisone shot, I didn't  
6 get any relief, so he said the other option would  
7 be Synvisc. He said that would be something that  
8 I might want to try, although he wasn't sure if it  
9 was covered by my insurance.

10 He didn't think it was for elbows,  
11 it's used for other parts of the body. He said  
12 that would be -- it would just be a chance, there  
13 was no guarantee that would help.

14 He said at my age an elbow replacement  
15 was not a very good option, because if I had that  
16 done, I would be very limited in terms of what I  
17 could do as a coach.

18 He said I wouldn't recommend that at  
19 all unless you were probably in your 80's and not  
20 very active, because it wouldn't last very long.

21 So I went with the shots of cortisone  
22 and I have to decide on Synvisc. He told me to do  
23 some -- he said look it up. He gave me how it's  
24 spelled. He said if you want to look it up on the  
25 Internet and check it out a little bit, so that

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1 Brian Walsh 71  
2 Hospital for Special Surgery I guess?

3 A Yeah. I mean, Danbury Orthopedics did  
4 not refer me there. I wanted to get a second  
5 opinion when I was told there wasn't much else  
6 that they could do.

7 Q About how many times have you been in  
8 the Hospital for Special Surgery, or seen this  
9 doctor?

10 A I think I've seen him three times,  
11 including the initial.

12 Q Do you recall what this doctor told  
13 you the first time you went to see him?

14 A No. He said -- well, initially he  
15 wanted to take -- I brought the MRI that was taken  
16 up in -- it wasn't taken in Danbury, it was taken  
17 at a place up there near Brewster.

18 I brought those down and he said he  
19 would like to have another set of MRIs done, which  
20 I had done, and then he said the option, the first  
21 option would be to give me a shot of cortisone,  
22 which happened. He gave me a shot of cortisone,  
23 and I didn't get any relief from that.

24 Q That was on that first visit?

25 A No, no, it wasn't the first visit.

1 Brian Walsh 73  
2 was the last I saw him.

3 Q Just for the record, what is your  
4 understanding of what is Synvisc?

5 A It's kind of a gel type of substance  
6 that's used to -- he said they are not exactly  
7 sure how it works, but it works on some people in  
8 some parts of the body, but he said that the  
9 elbow, right now it's not F.D.A. approved for the  
10 elbow, so he said in terms of it being covered by  
11 insurance, it might not be.

12 Q How many cortisone shots did you have?

13 A One.

14 Q When is the last time you were in the  
15 Hospital for Special Surgery?

16 A The last time I was in the Hospital  
17 for Special Surgery was in the spring. I believe  
18 it was maybe April of this past spring. It was at  
19 the end of March or April. That was the last  
20 time.

21 Q Have you had any treatment since that  
22 March or April of this year on your elbow?

23 A No.

24 Q Do you still have metal in your elbow?

25 A Yes.



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Brian Walsh 74

Q Have you spoken to Dr. DiGenaro or any other doctor about having that removed?

A No. I talked to the doctor at the Hospital for Special Surgery. He said that that wouldn't necessarily give me any relief.

Q You mentioned after the physical therapy that you went to the Hospital for Special Surgery because you were still having pain --

A That's correct.

Q -- is that right?

How was that pain different from the arthritis pain that you had prior to the accident?

MR. MEENAGH: Well, you're saying arthritis. He --

MR. BANINO: Okay. I understand.

Please don't coach the witness.

Q Prior to the injury, the pain you had prior to the injury.

A It was a constant pain. It was just in movement, you know, by doing -- combing my hair, brushing -- it was a real constant pain that didn't seem to be going away, so from having had other surgeries usually after a period of time.

I had asked, I was concerned, the

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doctor at Danbury. I said is this pain going to go away, because right now I'm very limited.

And he said he wasn't sure. He couldn't -- so it was sharp, it was kind of a constant pain, whereas before it wasn't constant at all.

It wasn't even like -- it was just if I had done something very strenuous, I had a little bit of aching, where this was sharp and pretty extreme.

Q Do you currently have any restrictions on the range of use of your elbow?

A Yes.

Q Can you describe those?

A Well, I can't throw a ball correctly, I mean, to demonstrate as a coach. I get a lot of pain when I do that, and I don't have much strength, most extension type of exercises, when prior I was pretty involved in physical activity, exercising.

It's very difficult for me to do a push-up or any kind of a bench press. There is a tremendous amount of pain. I don't have the strength there. It hurts.

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I mean, I can comb my hair and brush my teeth, but it hurts when I do a twisting type of motion like that.

Any type of lifting. Doesn't even have to be anything heavy. Depends on the angle that I'm doing, so it's pretty restrictive.

Q You mentioned push-ups and bench presses.

Were you doing those prior to the injury?

A Yes.

Q You didn't have any problems with your elbow doing that?

A No. And throwing, I have been a high school coach for thirty-nine years. I always demonstrate. Being a former quarterback I could do that pretty well, and now I can't really do that.

Q Did you have any problems like you just described after you tore your rotator cuff?

A No.

Q You had no problems throwing or bench pressing or --

A I mean, prior to the rotator cuff

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Brian Walsh 77

surgery I had problems throwing a football. That's what initially, you know, because it started bothering me a little bit, and it got worse, but since the rotator cuff surgery I haven't had any problems at all.

Q Other than the treatment at Danbury and the Hospital for Special Surgery, as well as the physical therapy, have you had any other medical treatments for your elbow?

A No.

MR. BANINO: Can we mark this (indicating).

(Whereupon, Aetna Health Plans chart was marked Defendant's Exhibit I for Identification, as of this date, by the reporter.)

Q Mr. Walsh, I'm showing you what has been marked as Defendant's Exhibit I. It's a document that's been produced by your counsel.

It appears to be -- well, what does it appear to be to you?

A It appears to be a record that shows all my treatment associated with my elbow.

Q If you turn to the last page, the last

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Brian Walsh 78

line has totals and it has two amounts, two dollar amounts. One of those amounts is \$5,988.88.

What does that number represent, if you know?

A I don't know. In fact, at the top it says "paid amount."

Q Do you know if this reflects co-pays or other out-of-pocket expenses that you expended for medical treatment?

A I don't know if that's --

Q Okay. On the last page of this four-page document, there is the treatment date listed is September 29th, 2008.

Does that accurately reflect your last medical treatment?

A I saw Dr. Daluiski one more time after the injection as a followup. I believe that was this past March or May.

Q Did you pay cash for that treatment?

A I don't recall. I don't think I did. I don't recall.

Q Have you incurred any other out-of-pocket expenses other than co-pay expenses as a result of this incident?

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A I guess just parking fees in New York City, gas, tolls, things like that.

Q Anything else?

A Not that I can recall right now.

Q Do you have any receipts for any of that, and by "that," I mean the parking fees and the gas, tolls?

A I'd have to check. I don't remember keeping them specifically.

MR. BANINO: To the extent those are available, we'd like copies of that.

(REQUEST)

Q Did KLM charge you any ticket fee to switch to the later flight?

A I don't recall.

Q Other than the problems you mentioned before regarding how your elbow feels and felt since the accident, is there anything else that's changed because of the accident?

A And, again, other than the things you have already described.

A No, just my exercise routines and things like that have changed. Some of the

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Brian Walsh 80

activities I do have changed.

Q Do you currently exercise?

A No, walk. I'm not a member of a gym or anything.

Q Do you do anything other than walking?

A As far as exercise, no.

Q Have you made any malpractice claims or other claims relating to your medical treatment as a result of this injury?

A No.

Q Are you contemplating any malpractice or other actions or claims against --

A No.

Q -- your medical providers?

A No, no, I'm not.

Q Have you made any claims against the Schiphol Airport Authority as a result of this accident?

A I don't think I have, no, I have none.

MR. BANINO: S-C-H-I-P-H-O-L.

Q Do you know if you or your attorney have ever spoken to anyone from the airport authority in Amsterdam?

A No. We -- I think my wife and I

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filled out a report, kind of like a complaint or something, but I don't remember talking to anybody from the authority there.

Q Was there a report with the airport authority?

A (No response.)

Q Who was the report for?

A It was -- I guess it was for the airport authority, I guess.

Q Do you have a copy of that report?

A No.

Q Do you know who you --

A I know my wife wrote a letter which I have a copy of to them.

MR. BANINO: We request that that be produced as well.

(REQUEST)

Q About how long after the accident did you write the letter?

A It was within days. It was related to the fact that I wasn't -- I didn't get transported by a cart, it was delayed.

I thought being on the ground for ten minutes, nobody really -- they kept calling on a

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1 Brian Walsh 82  
2 walkie-talkie, I ended up walking. I didn't  
3 think I should have had to walk to a first aid  
4 station.

5 Q By calling a cart, you mean calling  
6 one of those airport carts --

7 A Right. Exactly. Right.

8 Q -- that takes you --

9 A Right. In other words, I didn't want  
10 to really walk to the first aid station that I was  
11 in the condition I was in, but I ended up doing  
12 that.

13 Q What was the response from the airport  
14 authority?

15 A I don't remember. I don't remember  
16 any response. I'd have to look and see if my wife  
17 got a letter back. I think it was just an  
18 acknowledgement that they got it. I'd have to  
19 check. I'm not sure.

20 Q What caused you to file a report? By  
21 that, did they send you a form to fill out?

22 A I don't recall them sending me a form.  
23 I thought my wife filled out a form at the airport  
24 but I have to check with her.

25 Q On the day of the accident?

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1 Brian Walsh 83  
2 A Yes. I have to check with her on  
3 that.

4 I remember asking if there was a place  
5 we could do that because again, the way -- I  
6 didn't think I was treated great so we wanted to  
7 complain.

8 Q Did you see a copy of the report  
9 before it was given to the airport authority?

10 A I don't remember that. I don't  
11 remember.

12 Q Did you fill it out or did your wife  
13 fill it out?

14 A I didn't fill it out.

15 Q Did she ask you questions in filling  
16 it out, or while filling it out?

17 A I don't recall. I don't recall  
18 exactly what happened with that.

19 I know she wrote a letter. I remember  
20 seeing a copy of the letter. In terms of the  
21 form, in terms of an exact form, I don't remember  
22 seeing a form.

23 I thought at the time we were looking  
24 to fill something out. I'm not even sure if we  
25 did at the airport. There was talk of that. I

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1 Brian Walsh 84  
2 have to check with her.

3 Q Did you review the letter before it  
4 was sent to the airport authority?

5 A The letter my wife wrote?

6 Q Yes.

7 A I think I did. I believe I did.

8 Q Do you remember it being accurate?

9 A As far as I can remember.

10 Q How about the report, did you review  
11 that before it was given to the airport authority?

12 MR. MEENAGH: I object to that.

13 A Again, I don't remember the form, so I  
14 remember inquiring about it, I'm not sure if a  
15 form was even filled out. I remember asking if  
16 there was a form. I don't know if we filled one  
17 out at the time. I don't remember filling -- I  
18 didn't personally fill one out.

19 Q So when you mentioned a "report," what  
20 did you mean by a "report"?

21 A Well, I remember asking if there was a  
22 place we could complain, but again at the time it  
23 was kind of hectic between me getting to the first  
24 aid station, getting to the hospital and back, and  
25 catching that plane, so I don't know if anything

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1 Brian Walsh 85  
2 was done at the airport.

3 Q So just so I'm clear, do you know if  
4 there was a report filled out?

5 A I'm not exactly sure of that. I will  
6 have to check with my wife if there was something  
7 done more than a letter.

8 Q You mean the letter before you  
9 returned home?

10 A Right. There was some correspondence.  
11 I think the letter that my wife wrote I think was  
12 actually more toward -- I think it was more toward  
13 KLM. I will have to check that.

14 Q The letter --

15 A The letter that -- I said the letter  
16 that she wrote complaining, I think it was  
17 directed more toward KLM, but I will have to check  
18 the letter again. I didn't review that letter  
19 recently.

20 Q Did she just send one letter, or was  
21 it more than one letter?

22 A I don't recall. I'm not sure what the  
23 exact correspondence back and forth was.

24 Q Do you know who it was sent to,  
25 whether it was KLM or the airport authority?

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1 Brian Walsh 86  
2 A Offhand? I thought it was KLM. To  
3 the best of my knowledge, it was KLM.

4 Q What made you think that KLM was  
5 responsible for what happened?

6 A Just the fact that we were flying on  
7 their plane and we had a change. There was a  
8 little bit of hassle in terms of changing. I  
9 think there was some frustration in terms of  
10 changing tickets and all that, that's why.

11 Q What made you think that KLM was  
12 responsible for the metal bar?

13 A For the metal bar? Well, I just  
14 thought that was the area where we were flying, I  
15 thought that was their responsibility.

16 Q And you mentioned that you are unhappy  
17 about the delay with the cart.

18 A Yes.

19 Q What made you think that KLM was  
20 responsible for that?

21 A Oh, I didn't necessarily think that  
22 KLM was responsible for that --

23 Q Okay.

24 A -- I felt it was I should have been  
25 attended to a little bit.

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1 Brian Walsh 87  
2 Q Who did you think should have attended  
3 to you better, the airport authority or KLM?

4 A Somebody. I'm not sure who.

5 MR. BANINO: Let's take a five  
6 minute break. I will just review my  
7 notes and that may be it.

8 (Whereupon, a brief recess was  
9 taken.)

10 Q Mr. Walsh, we are just a little  
11 unclear on what these pictures depict.

12 Maybe if you can give us -- just  
13 sketch out roughly what the boarding area looked  
14 like, where the bar was in relation to the chairs,  
15 and I guess where you were traveling.

16 MR. MEENAGH: Wait a second.

17 I'm not sure what you're asking  
18 him but I'm not going to have him draw  
19 a picture. So, I mean --

20 MR. BANINO: Okay. That's fine.

21 That's fine.

22 A I mean --

23 MR. BANINO: That's all right.

24 A -- would you like me to show you, I  
25 mean, I can show you if that's --

1 Brian Walsh 88  
2 MR. MEENAGH: Can we go off the  
3 record for a second?

4 (Whereupon, a discussion was  
5 held off the record.)

6 MR. BANINO: I assume you don't  
7 have an objection to this being marked  
8 as an exhibit for the deposition?

9 MR. MEENAGH: No.

10 THE WITNESS: This here  
11 (indicating)?

12 MR. BANINO: Yes.

13 Can we mark this as Exhibit J.

14 (Whereupon, drawing was marked  
15 Defendant's Exhibit J for  
16 Identification, as of this date, by  
17 the reporter.)

18 Q Mr. Walsh, I'm showing you what's been  
19 marked as Exhibit J.

20 As your counsel and I just discussed,  
21 this is an extremely rough sketch of what the  
22 boarding area looked like.

23 So that I can describe it for the  
24 record, the four circles in the rectangle are  
25 approximately where you were sitting in the

1 Brian Walsh 89  
2 boarding area?

3 A Those were seats, yes.

4 Q And the dark line was where you  
5 traveled before you fell just prior to your fall?

6 A That's correct.

7 Q And the single line which intersects  
8 with that dark line approximates the bar which you  
9 tripped over which caused you to fall.

10 A Correct.

11 Q The line with the circles on it were a  
12 line of passengers waiting to board the flight; is  
13 that correct?

14 A That's correct.

15 Q Okay. When you entered the boarding  
16 area, can you draw an arrow as to where on this  
17 picture you boarded the area from.

18 How did you enter the boarding  
19 area?

20 MR. MEENAGH: Just kind of the  
21 route, I guess.

22 Q And, again, this is a rough  
23 approximate.

24 MR. MEENAGH: This is when he came  
25 there --

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1 Brian Walsh 90  
2 MR. BANINO: When he came into the  
3 boarding area to come and sit down to  
4 wait for a departure.

5 A Okay. I came from this direction here  
6 (indicating). There is a huge hallway here  
7 (indicating). I came from this part of the  
8 airport, right here (indicating).

9 MR. MEENAGH: Behind where the  
10 arrow is where you drew on the  
11 photo.

12 Q So the arrow represents the direction  
13 you came from.

14 A Correct.

15 Q Were there windows in this boarding  
16 area at an outer wall?

17 A I don't recall that. I don't remember  
18 that.

19 Q The area where the arrow is to where  
20 the seats are, were there any seats in between the  
21 seats that you sat in and the arrow?

22 A I don't recall.

23 I mean, there were seats -- these were  
24 not the only seats in the area. I mean, there  
25 were other seats in the area. I'm not exactly

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1 Brian Walsh 92  
2 MR. BANINO: Thank you, Mr. Walsh,  
3 for coming in.

4  
5 (Time noted: 11:36 a.m.)  
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1 Brian Walsh 91  
2 sure how everything was configured.

3 Q Was there anything in between the  
4 arrow and where you sat?

5 MR. MEENAGH: Can you be a little  
6 more specific?

7 MR. BANINO: Sure.

8 Q Was there anything other than the  
9 floor in between --

10 A I think there might have been other  
11 seats over in this area (indicating), I think. I  
12 don't have a clear picture of that right now in my  
13 head.

14 Q Do you recall seeing a similar bar  
15 behind any of those other seats?

16 A No, I do not. I don't recall seeing  
17 the bar at all until after I tripped.

18 It was like I looked back, because I  
19 was wondering what I tripped over, and I saw this  
20 bar, and I said, you know.

21 MR. BANINO: Okay. I have no  
22 further questions. I don't know if  
23 you have any.

24 MR. MEENAGH: No, I have no  
25 questions.

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2 A C K N O W L E D G M E N T  
3

4 STATE OF NEW YORK )  
5 ss:  
6 COUNTY OF DUTCHESS)  
7  
8

9 I, BRIAN WALSH, hereby certify that I have  
10 read the transcript of my testimony taken under oath  
11 in my deposition of October 29, 2009; that the  
12 transcript is a true, complete, and correct record of  
13 what was asked, answered, and said during this  
14 deposition, and that the answers on the record as  
15 given by me are true and correct.  
16

17 \_\_\_\_\_  
18 BRIAN WALSH  
19  
20  
21  
22

23 Subscribed and sworn to  
24 before me this \_\_\_\_ day  
25 of \_\_\_\_\_, 2009.

\_\_\_\_\_  
NOTARY PUBLIC



## 94

## EXHIBITS

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## 95

SS:

IN WITNESS WHEREOF, I have hereunto set my hand  
this 5th day of November 2009.

CHERYL THOMPSON

## 96

[illegible]

Subscribed and sworn to  
before me this \_\_\_\_ day  
of \_\_\_\_\_, 2009.

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PDR \* READ MODE \*  
 AMSKL0700/2900MK/SU  
 RPP/KL0641/21JUL07

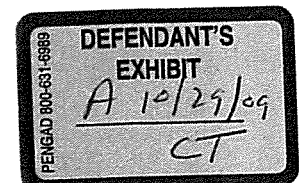
03MAR09/0814Z

--- TST RLR ---

RP/BOSGC3100/BOSGC3100

IP/SU 21JUL07/1219Z 37LIZR

1. WALSH/BARBARA MRS(ID UNS 05JUL 1449909 O) 2. WALSH/BRIAN MR  
 3 KL 642 T 05JUL07 4 JFKAMS HK2 FLWN  
 4 KL 569 T 06JUL07 5 AMSJRO HK2 FLWN  
 5 KL 569 T 20JUL07 5 JROAMS HK2 FLWN  
 6 KL 641 T 21JUL07 6 AMSJFK HK2 FLWN  
 7 KL 643 B 21JUL07 6 AMSJFK HL2 FLWN  
 8 AP BOS617-350-7500-A  
 9 AP JFK845-226-7278-H  
 10 APE BWALSH2@SCHOOLS.NYC.GOV  
 11 TK OK31MAY07/BOSGC3100  
 12 OSI KL AGCY BULLETIN  
 13 OSI KL CONTRACT BT899  
 14 OSI KL CTCT BOS617 350 7500 A  
 15 OSI KL CTCH JFK845 226 7278 H  
 16 AI AN300000  
 17 RM SABRE PNR LOCATOR - EIOCOV  
 18 RM OVERSEAS ADVENTURE TRAVEL  
 19 RM 124 MOUNT AUBURN STREET  
 20 RM SUITE 200 NORTH  
 21 RM CAMBRIDGE MA 02138  
 22 RM OSI AA \*\*\* PREV TIME FOR KL 569T 20JUL JROAMS 905P 730A  
 23 RM OSI AA \*\*\* PREV TIME FOR KL 642T 05JUL JFKAMS 620P 745A  
 24 RM OSI AA \*\*\* PREV TIME FOR KL 569T 06JUL AMSJRO 1035A 805P  
 25 RM OSI AA \*\*\* PREV TIME FOR KL 569T 20JUL JROAMS 900P 725A  
 26 RM OSI AA \*\*\* PREV TIME FOR KL 569T 06JUL AMSJRO 1035A 800P  
 27 RM OSI AA \*\*\* PREV TIME FOR KL 641T 21JUL AMSJFK 130P 325P  
 28 RM OSI AA \*\*\* PREV TIME FOR KL 642T 05JUL JFKAMS 610P 745A  
 29 RM S PAX TRAVEL WITH COSTABILE  
 30 RM RECEIVED FROM - OTA  
 31 RM B6D1.B6D1\*AQT 0249/28AUG06 EIOCOV H  
 32 RM VF 31032007 1249 PNR AUTOMATED  
 33 RM VF 31032007 1249 Q-TAX SUM - NUC ADT 240.00  
 34 RM VF 31032007 1249 NET - USD ADT 2 X 2024.00  
 35 RM VF 18042007 2053 PNR AUTOMATED  
 36 RM VF 18042007 2053 Q-TAX SUM - NUC ADT 240.00  
 37 RM VF 18042007 2053 NET - USD ADT 2 X 2024.00  
 38 RM VF 02052007 1633 PNR AUTOMATED  
 39 RM VF 02052007 1633 Q-TAX SUM - NUC ADT 240.00  
 40 RM VF 02052007 1633 NET - USD ADT 2 X 2024.00  
 41 RM VF 17052007 1840 PNR AUTOMATED  
 42 RM VF 17052007 1840 Q-TAX SUM - NUC ADT 240.00  
 43 RM VF 17052007 1840 NET - USD ADT 2 X 2024.00  
 44 RM VF 22052007 1628 PNR AUTOMATED  
 45 RM VF 22052007 1628 Q-TAX SUM - NUC ADT 240.00  
 46 RM VF 22052007 1628 NET - USD ADT 2 X 2024.00  
 47 RM VF 31052007 1358 PNR AUTOMATED  
 48 RM VF 31052007 1358 Q-TAX SUM - NUC ADT 240.00  
 49 RM VF 31052007 1358 NET - USD ADT 2 X 2024.00  
 50 RM P2 BROKE HIS ARM AND HAD TO GO TO THE HOSTITAL  
 51 RM PAX REBOOKED DUE TO THAT NO REBOOKINGFEE// PAX KNOW THEY  
 52 RM ARE WL  
 53 RML EIOCOV  
 54 RMT TAW05JUN TW COSTABILE  
 55 RM \*\*\* PNR MIGRATED FROM SABRE \*\*\*  
 56 RM \*ATTEMPT TO BOOK OUTBOUND LIVE TO BLOCK SCENARIO ON NW  
 IN TCLASS  
 57 RM \*ATTEMPT TO BOOK OUTBOUND LIVE INSTEAD OF BLOCK SCENARIO  
 58 RM \*ATTEMPT TO BOOK RETURN BO INSIDE LL SCENARIO  
 59 RM \*ATTEMPT TO BOOK RETURN LIVE TO BLOCK SCENARIO ON NW IN  
 T CLASS



60 RM \*NBR OF PAX IS GREATER THAN SEATS IN AVAILABILITY  
61 RM \*NO BLOCK WAS FOUND IN ACCESS  
62 RM \*CANCELLING PREV. ATTEMPT TO BOOK - ANOTHER SCENARIO  
AVAIL.  
63 RM \*\*\*\*\*  
64 RM \*ATTEMPT TO BOOK OUTBOUND LIVE ONLY SCENARIO ON KL IN T  
CLASS  
65 RM \*ATTEMPT TO BOOK RETURN LIVE ONLY SCENARIO ON KL IN T  
CLASS  
66 RM \*SUCCESSFUL BOOKING  
67 RM \*UD1 UNS  
68 RM \*UD2 05JUL  
69 RM \*UD5 1449909  
70 RM \*\*\* AGENT NUMBER - QT \*\*\*  
71 RM \*BA/QT  
72 RX RESTRICTED  
73 RX RESTRICTED  
74 RX RESTRICTED  
75 RX RESTRICTED  
76 RX RESTRICTED  
77 RX RESTRICTED  
78 RX RESTRICTED  
79 RX RESTRICTED  
80 RX RESTRICTED  
81 RX RESTRICTED  
82 RX RESTRICTED  
83 RX RESTRICTED  
84 FA PAX 012-7026236300/ETNW/31MAY07/BOSGC3100/22677001/S3-6/P  
1  
85 FA PAX 012-7026236301/ETNW/31MAY07/BOSGC3100/22677001/S3-6/P  
2  
86 FB PAX 3100032910 TTP/ET/T1/XE5/INV OK ETICKET/S3-6/P1-2  
87 FE PAX NW/KL ONLY NONREF NONENDO/S3-6/P1-2  
88 FG PAX 3163230781 MUCWZ21ZZ/S3-6/P1-2  
89 FI PAX 3100032910 INV 0000043679/S3-6/P1  
90 FI PAX 3100032910 INV 0000043680/S3-6/P2  
91 FM PAX \*M\*0/S3-6/P1-2  
92 FP PAX CHECK/S3-6/P1-2  
93 FV PAX NW/S3-6/P1-2  
94 FY BULK  
95 AB MRS BARBARA WALSH  
96 AB 5702 CHELSEA COVE N  
97 AB HOPEWELL JUNCTION NY 12533



EX. D



EX. B





EX. G



EX. C





EX. F



EX. E





EX. H

## Aetna Health Plans

## The Rawlings Company

Friday, January 16, 2009 01:44 pm

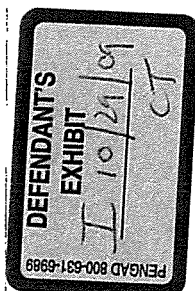
Patient's Name: BRIAN WALSH

Member's Name: BRIAN WALSH

File Number: 07ASI0901250

Make Checks Payable To:  
The Rawlings Company LLC  
Attn: Sherre Homm  
P.O. Box 2000  
La Grange, KY 40031-2000

Paid Amount Subject to Change.  
Please call (502) 753-2746  
for the final paid amount.  
Representative: Sherre Homm



Trmt. Date In	Claim No.	Provider	ICD9	ICD9 Desc.	CPT	CPT Desc.	Bill Amount	Paid Amount
07/21/2007	PAF5V011H00	MC DEFAULT PROVIDER	959.3	INJURY NOS, ELBOW/FOREARM	450	EMERG ROOM	\$414.15	\$364.15
07/23/2007	EGTSD70C800	Joseph DiGiovanni	812.42	FX HUMERUS, LATERAL CONDY	99203	OFFICE/OUTPT VISIT, NEW, DETAILED	\$149.00	\$97.06
07/25/2007	ERN3H7GL800	Danbury Surgical Center	812.42	FX HUMERUS, LATERAL CONDY	L8699	PROSTHETIC IMPLANT NOS	\$70.00	\$0.00
07/25/2007	EHA63JPY800	Vibhavary M. Shah	812.42	FX HUMERUS, LATERAL CONDY	01756	ANESTHESIA, RADICAL HUMERAL SURGERY	\$1,615.00	\$1,020.00
07/25/2007	ERN3H7GL800	Danbury Surgical Center	812.42	FX HUMERUS, LATERAL CONDY	L8699	PROSTHETIC IMPLANT NOS	\$70.00	\$0.00
07/25/2007	ERN3H7GL800	Danbury Surgical Center	812.42	FX HUMERUS, LATERAL CONDY	L8699	PROSTHETIC IMPLANT NOS	\$60.00	\$0.00
07/25/2007	ERN3H7GL800	Danbury Surgical Center	812.42	FX HUMERUS, LATERAL CONDY	L8699	PROSTHETIC IMPLANT NOS	\$60.00	\$0.00
07/25/2007	ERN3H7GL800	Danbury Surgical Center	812.42	FX HUMERUS, LATERAL CONDY	L8699	PROSTHETIC IMPLANT NOS	\$850.00	\$850.00
07/25/2007	ERN3H7GL800	Danbury Surgical Center	812.42	FX HUMERUS, LATERAL CONDY	L8699	PROSTHETIC IMPLANT NOS	\$60.00	\$0.00
07/25/2007	ERN3H7GL800	Danbury Surgical Center	812.42	FX HUMERUS, LATERAL CONDY	24579	REPAIR HUMERAL CONDYLAR FRACTURE	\$2,339.00	\$889.00
07/25/2007	ERN3H7GL800	Danbury Surgical Center	812.42	FX HUMERUS, LATERAL CONDY	L8699	PROSTHETIC IMPLANT NOS	\$60.00	\$0.00
07/25/2007	ERN3H7GL800	Danbury Surgical Center	812.42	FX HUMERUS, LATERAL CONDY	L8699	PROSTHETIC IMPLANT NOS	\$70.00	\$0.00
07/25/2007	ERN3H7GL800	Danbury Surgical Center	812.42	FX HUMERUS, LATERAL CONDY	L8699	PROSTHETIC IMPLANT NOS	\$60.00	\$0.00
07/25/2007	E9ML6BHP800	Joseph DiGiovanni	812.42	FX LOWER HUMERUS NOS, CLO	24579	REPAIR HUMERAL CONDYLAR FRACTURE	\$2,623.00	\$1,130.73
08/06/2007	EKVJTFVCR00	Joseph DiGiovanni	V58.78	AFTCR FOLLO SURG MUSCSK	73070	X-RAY EXAM OF ELBOW, 2 VIEWS	\$110.00	\$32.52
08/08/2007	E8FAABSX500	Melvin M. Cave	812.40	FX LOWER HUMERUS NOS, CLO	97014	APPLY MODALITY, 1+AREA, ELEC STIM	\$13.45	\$12.03
08/08/2007	E8FAABSX500	Melvin M. Cave	812.40	FX LOWER HUMERUS NOS, CLO	97124	TX PROC, 1+AREA, MASSAGE, EA 15 MIN	\$20.35	\$18.21
08/08/2007	E8FAABSX500	Melvin M. Cave	812.40	FX LOWER HUMERUS NOS, CLO	97035	APPLY MODALITY, ULTRASOUND, EA 15MIN	\$10.91	\$9.78
08/08/2007	E8FAABSX500	Melvin M. Cave	812.40	FX LOWER HUMERUS NOS, CLO	97110	TX PROC, 1+AREA, TX EXER, EA 15 MIN	\$25.48	\$7.81
08/10/2007	E8YZABS1X00	Melvin M. Cave	812.40	FX LOWER HUMERUS NOS, CLO	97110	TX PROC, 1+AREA, TX EXER, EA 15 MIN	\$25.48	\$7.81

Friday, January 16, 2009 01:44 pm

Patient's Name: BRIAN WALSH

Member's Name: BRIAN WALSH

File Number: 07ASI0901250

Make Checks Payable To:  
The Rawlings Company LLC  
Attn: Sherre Homm  
P.O. Box 2000  
La Grange, KY 40031-2000

Paid Amount Subject to Change.  
Please call (502) 753-2746  
for the final paid amount.  
Representative: Sherre Homm

Trmt. Date In	Claim No.	Provider	ICD9	ICD9 Desc.	CPT	CPT Desc.	Bill Amount	Paid Amount
08/10/2007	E8YZABS1X00	Melvin M. Cave	812.40	FX LOWER HUMERUS NOS, CLO	97035	APPLY MODALITY, ULTRASOUND, EA 15MIN	\$10.91	\$9.78
08/10/2007	E8YZABS1X00	Melvin M. Cave	812.40	FX LOWER HUMERUS NOS, CLO	97014	APPLY MODALITY, 1+AREA, ELEC STIM	\$13.45	\$12.03
08/10/2007	E8YZABS1X00	Melvin M. Cave	812.40	FX LOWER HUMERUS NOS, CLO	97124	TX PROC, 1+AREA, MASSAGE, EA 15 MIN	\$20.35	\$18.21
08/13/2007	E9AAABSXG00	Melvin M. Cave	812.40	FX LOWER HUMERUS NOS, CLO	97110	TX PROC, 1+AREA, TX EXER, EA 15 MIN	\$25.48	\$7.81
08/13/2007	E9AAABSXG00	Melvin M. Cave	812.40	FX LOWER HUMERUS NOS, CLO	97035	APPLY MODALITY, ULTRASOUND, EA 15MIN	\$10.91	\$9.78
08/13/2007	E9AAABSXG00	Melvin M. Cave	812.40	FX LOWER HUMERUS NOS, CLO	97014	APPLY MODALITY, 1+AREA, ELEC STIM	\$13.45	\$12.03
08/13/2007	E9AAABSXG00	Melvin M. Cave	812.40	FX LOWER HUMERUS NOS, CLO	97124	TX PROC, 1+AREA, MASSAGE, EA 15 MIN	\$20.35	\$18.21
08/16/2007	ESFAAGTAR00	Melvin M. Cave	812.40	FX LOWER HUMERUS NOS, CLO	97014	APPLY MODALITY, 1+AREA, ELEC STIM	\$13.45	\$12.03
08/16/2007	ESFAAGTAR00	Melvin M. Cave	812.40	FX LOWER HUMERUS NOS, CLO	97110	TX PROC, 1+AREA, TX EXER, EA 15 MIN	\$25.48	\$7.81
08/16/2007	ESFAAGTAR00	Melvin M. Cave	812.40	FX LOWER HUMERUS NOS, CLO	97035	APPLY MODALITY, ULTRASOUND, EA 15MIN	\$10.91	\$9.78
08/16/2007	ESFAAGTAR00	Melvin M. Cave	812.40	FX LOWER HUMERUS NOS, CLO	97124	TX PROC, 1+AREA, MASSAGE, EA 15 MIN	\$20.35	\$18.21
08/20/2007	ESYZAGS4100	Melvin M. Cave	812.40	FX LOWER HUMERUS NOS, CLO	97124	TX PROC, 1+AREA, MASSAGE, EA 15 MIN	\$20.35	\$18.21
08/20/2007	ESYZAGS4100	Melvin M. Cave	812.40	FX LOWER HUMERUS NOS, CLO	97110	TX PROC, 1+AREA, TX EXER, EA 15 MIN	\$25.48	\$7.81
08/20/2007	ESYZAGS4100	Melvin M. Cave	812.40	FX LOWER HUMERUS NOS, CLO	97035	APPLY MODALITY, ULTRASOUND, EA 15MIN	\$10.91	\$9.78
08/20/2007	ESYZAGS4100	Melvin M. Cave	812.40	FX LOWER HUMERUS NOS, CLO	97014	APPLY MODALITY, 1+AREA, ELEC STIM	\$13.45	\$12.03
08/23/2007	EWYAMCLF00	Melvin M. Cave	812.40	FX LOWER HUMERUS NOS, CLO	97110	TX PROC, 1+AREA, TX EXER, EA 15 MIN	\$25.48	\$7.81
08/23/2007	EWYAMCLF00	Melvin M. Cave	812.40	FX LOWER HUMERUS NOS, CLO	97035	APPLY MODALITY, ULTRASOUND, EA 15MIN	\$10.91	\$9.78

Please write this number on your check: 07ASI0901250



## Aetna Health Plans

## The Rawlings Company

Friday, January 16, 2009 01:44 pm

Patient's Name: BRIAN WALSH

Member's Name: BRIAN WALSH

File Number: 07ASI0901250

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08/23/2007	EWYZAMCLF00	Melvin M. Cave	812.40	FX LOWER HUMERUS NOS, CLO	97124	TX PROC, 1+AREA, MASSAGE, EA 15 MIN	\$20.35	\$18.21
08/23/2007	EWYZAMCLF00	Melvin M. Cave	812.40	FX LOWER HUMERUS NOS, CLO	97014	APPLY MODALITY, 1+AREA, ELEC STIM	\$13.45	\$12.03
08/27/2007	EWYZAMCMF00	Melvin M. Cave	812.40	FX LOWER HUMERUS NOS, CLO	97014	APPLY MODALITY, 1+AREA, ELEC STIM	\$13.45	\$12.03
08/27/2007	EWYZAMCMF00	Melvin M. Cave	812.40	FX LOWER HUMERUS NOS, CLO	97035	APPLY MODALITY, ULTRASOUND, EA 15MIN	\$10.91	\$9.78
08/27/2007	EWYZAMCMF00	Melvin M. Cave	812.40	FX LOWER HUMERUS NOS, CLO	97124	TX PROC, 1+AREA, MASSAGE, EA 15 MIN	\$20.35	\$18.21
08/27/2007	EWYZAMCMF00	Melvin M. Cave	812.40	FX LOWER HUMERUS NOS, CLO	97110	TX PROC, 1+AREA, TX EXER, EA 15 MIN	\$25.48	\$7.81
09/04/2007	EAAAASZ3F00	Melvin M. Cave	812.40	FX LOWER HUMERUS NOS, CLO	97110	TX PROC, 1+AREA, TX EXER, EA 15 MIN	\$25.48	\$7.81
09/04/2007	EAAAASZ3F00	Melvin M. Cave	812.40	FX LOWER HUMERUS NOS, CLO	97014	APPLY MODALITY, 1+AREA, ELEC STIM	\$13.45	\$12.03
09/04/2007	EAAAASZ3F00	Melvin M. Cave	812.40	FX LOWER HUMERUS NOS, CLO	97124	TX PROC, 1+AREA, MASSAGE, EA 15 MIN	\$20.35	\$18.21
09/04/2007	EAAAASZ3F00	Melvin M. Cave	812.40	FX LOWER HUMERUS NOS, CLO	97035	APPLY MODALITY, ULTRASOUND, EA 15MIN	\$10.91	\$9.78
09/10/2007	ETJKAGVMS00	Joseph DiGiovanni	V58.78	AFTRCR FOLLOW SURG MUSCSK	73070	X-RAY EXAM OF ELBOW, 2 VIEWS	\$110.00	\$32.52
10/11/2007	EG34AS1GF00	Joseph DiGiovanni	V58.78	AFTRCR FOLLOW SURG MUSCSK	73070	X-RAY EXAM OF ELBOW, 2 VIEWS	\$110.00	\$32.52
11/13/2007	EPPAA2MY900	Joseph DiGiovanni	V67.09	FOLLOW-UP EXAM, AFTER SUR	99213	OFFICE/OUTPT VISIT, EST, EXP PROB	\$87.00	\$46.97
11/13/2007	EPPAA2MY900	Joseph DiGiovanni	V67.09	FOLLOW-UP EXAM, AFTER SUR	73070	X-RAY EXAM OF ELBOW, 2 VIEWS	\$110.00	\$42.52
01/24/2008	EQ34BP1L600	Northeast Radiology, P.C.	718.12	LOOSE BODY IN JOINT, UPPE	73200	CT SCAN OF ARM	\$911.00	\$224.07
01/28/2008	ECAABQTB300	Joseph DiGiovanni	715.92	OSTEOARTHROSIS NOS, UPPER	99213	OFFICE/OUTPT VISIT, EST, EXP PROB	\$87.00	\$46.97
03/31/2008	EGJKCCBS00	Aaron Daluiski	715.93	OSTEOARTHROSIS NOS, FOREA	99213	OFFICE/OUTPT VISIT, EST, EXP PROB	\$200.00	\$100.00
04/23/2008	EQ34CLSMZ00	Robert Ludwig	841.9	SPRAIN/STRAIN, ELBOW/FORE	73200	CT SCAN OF ARM	\$462.00	\$452.00
09/29/2008	E6YZD0K3700	Aaron Daluiski	719.42	PAIN IN JOINT, UPPER ARM	J0702	BETAMETHASONE ACET/SOD PHOSP /3MG	\$25.00	\$5.17

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Tax Id Number: 31-1563156

## Aetna Health Plans

## The Rawlings Company

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09/29/2008	E6YZD0K3700	Aaron Daluiski	719.42	PAIN IN JOINT, UPPER ARM	99213	OFFICE/OUTPT VISIT, EST, EXP PROB	\$200.00	\$115.76
09/29/2008	E6YZD0K3700	Aaron Daluiski	719.42	PAIN IN JOINT, UPPER ARM	20610	DRAIN/INJECT MAJOR JOINT OR BURSA	\$375.00	\$122.13
09/29/2008	E6YZD0K3700	Aaron Daluiski	719.42	PAIN IN JOINT, UPPER ARM	S0020	INJECTION, BUPIVICAINE HYDRO	\$25.00	\$2.16
<b>TOTALS</b>							<b>\$11,873.67</b>	<b>\$5,988.89</b>



